

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 615 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BACHUBHAI KALAYANBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR MA KHARADI for Petitioner

MS MANISHA LAVKUMAR ASSTT GOVT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 10/11/2000

ORAL JUDGEMENT

#. Heard Mr.M.A.Kharadi, learned advocate appearing on behalf of the petitioner and Ms.Manisha Lavkumar, learned AGP on behalf of the respondent authorities.

#. In the present petition, RULE and interim relief in

terms of para-9(D) has been granted by this Court on 30th January, 1993. In the present petition, order dated 26th August, 1976 passed by the Deputy Collector, Olpad Prant, Surat wherein, permission to sell the land in question has been granted in favour of the petitioner to the original land owner. The said order passed by the Deputy Collector, Olpad Prant dated 26th August, 1976 has been taken in review by suo motu powers by the Special Secretary, Revenue Department (Appeals), State of Gujarat by issuing show cause notice dated 9th January, 1992 after period of 16 years. Thereafter, the revisional authority has set aside the order passed by the Deputy Collector, Olpad Prant dated 26th August, 1976 by his order dated 20th May, 1992. Therefore, in the present petition, order dated 20th May, 1992 passed by the Special Secretary (Appeals), Revenue Department, State of Gujarat - Annexure-A page-9 is under challenge.

#. Mr.M.A.Kharadi, learned advocate has submitted that only one ground of unreasonable delay in exercising the suo motu powers after period of 16 years by the authority is sufficient to set aside the order in question and therefore, according to his submission, question on merits is not necessary to be examined by this Court but the contention of unreasonable and undue delay in exercising suo motu powers by the authority is sufficient to set aside the order passed by the authority.

#. Ms.Manisha Lavkumar, learned AGP has submitted that the order passed by the authority is legal and valid in exercising suo motu powers under the Act. It is a reasoned order and while exercising the powers under Article 227 of the Constitution, this Court cannot interfere such powers when the authority has not committed any error. Therefore, according to her submission, the present petition is required to be dismissed.

#. I have considered submissions of both the learned advocates for the parties. In the present case, the petitioner has been able to succeed in respect of the contention of unreasonable delay on the part of the respondent authority for exercising the suo motu powers under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 and therefore, this Court is not going into the merits of the another aspects of the matter and this Court has only examined the question of unreasonable delay which has been raised by Mr.M.A.Kharadi on behalf of the petitioner.

#. Mr.Kharadi, learned advocate for the petitioner has also relied upon the decision of this Court as well as the Apex Court in support of his contention. The following authorities have been cited by Mr.Kharadi, learned advocate for the petitioner in support of his contention. In case of EVERGREEN APARTMENT COOPERATIVE HOUSING SOCIETY LTD VS. SPECIAL SECRETARY, REVENUE DEPARTMENT, GOVT OF GUJARAT reported in 1991 (1) GLR 113. In case of PARSHOTTAM RAMAJI RATHOD VS. D.D. MISTRY reported in 1999 (2) GLH 310 and so also in case of SHREE RAVIDARSHAN COOPERATIVE HOUSING SOCIETY VS. P.THAKKER reported in 2000 (2) GLR 1639 and in case of MOHAMAD KAVI MOHAMAD AMIN VS. FATMABAI IBRAHIM reported in (1997) 6 SCC Supreme Court Cases page 71. In case of KESHAVLAL A. MANTAR VS. DY. COLLECTOR in Special Civil Application No. 2323/89 decided on 16th June, 2000 so also in case of GANAPAT M. SHIKARI VS. STATE OF GUJARAT delivered in Special Civil Application No. 1778 of 1987 [coram : D.M.Dharmadhikari, CJ.] on 3rd March, 2000.

#. I have considered the various authorities cited by the learned advocate Mr.Kharadi. Observations of the Apex Court in case of MANCHHARAM VS. SP PATHAK AND OTHERS in Civil Appeal No. 1262 (N) of 1978 decided on 28th September, 1983, it has been observed that;

"Where the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within as reasonable time. This is too well established to need buttressing by precedent. However, one is readily available in State of Gujarat vs. Patel Raghav Natha and others (1970) 1 SCR 335."

##. Recently, the Apex Court has also considered the power which has been exercised by respondent authorities under Section 84-C under suo motu inquiry by Mamlatdar should be initiated within reasonable time. Sale of land taking place in December, 1972, the suo motu inquiry started in September, 1973, it was held that suo moto power under Section 84-C, not exercised within reasonable time.

#. In all the decisions which have been cited by the learned advocate Mr.Kharadi of this Court as well as of Apex Court, the question of exercise of powers by the authorities within reasonable period or not has been examined in light of the facts that when no period of limitation has been specified under the statutory provisions. In case of MOHAMAD KAVI MOHAMAD AMIN Vs.

FATMABAI IBRAHIM (1997) 6 SCC 71, even 1 year delay has been considered by the Apex Court unreasonable while exercising the suo motu powers under Section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976 and therefore, considering this decision of the Apex Court and the facts of the present case, wherein at least more than 16 years period have been passed after sale deed has been executed between the parties. Therefore, looking to the facts of the present case and averments made in the petition that the petitioner has spent huge amount for developing the land in question and further considering the fact that the petitioner remained with the land and is earning his livelihood, it appears that the impugned action of the respondent authorities after such long period will take away the source of livelihood of the petitioner. It may also be mentioned that the petition has been filed in the year 1993, has remained unchallenged so far as the averments made in the petition are concerned. The petitioner has undisputedly in possession of the land and has cultivated the land and therefore in view of decision of the Apex Court as well as of this Court as referred to above, I hold that the action under the Act was taken by the respondent authorities after undue and unreasonable delay of more than 16 years.

##. Therefore, the petitioner succeeds in the present petition on the aspect of unreasonable and undue delay on the part of the respondent authorities for undertaking the proceedings under the Act. Since the petitioner has succeeded in the present petition only on the unreasonable delay, this Court does not examine the other contentions raised in this petition and same are not dealt with separately. Consequently, the petition succeeds and is allowed accordingly. The impugned order dated 20th May, 1992 at Annexure-A is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, the parties are left to bear their own costs.

Date : 10-11-2000 [H.K.Rathod, J.]

#kailash#